

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC STEWART,

Defendant-Appellant.

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UNPUBLISHED  
September 18, 2003

No. 240376  
Wayne Circuit Court  
LC No. 01-006093

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon (CCW), MCL 750.227, discharge of a weapon in a building, MCL 750.234(b), possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and two counts of felonious assault, MCL 750.82. Defendant was sentenced to two to five years' imprisonment for CCW, two to four years' imprisonment for discharge of a weapon in a building, two years' imprisonment for felony-firearm, and two terms of two to four years' imprisonment for felonious assault. Defendant appeals as of right. We affirm defendant's convictions, but remand for resentencing on the two counts of felonious assault. This case has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to support his conviction for carrying a concealed weapon because the complainant testified that the alleged weapon was concealed while defendant was on his own property.<sup>1</sup> Defendant would be correct if that were the only evidence presented regarding defendant's location when the weapon was concealed. MCL 750.227(2); *People v Pasha*, 466 Mich 378, 382-383; 645 NW2d 275 (2002). However, the complainant, Kevin Wilkins, also testified that he was standing in his parents' driveway when he noticed defendant on his own property, which was across the street and two doors down, giving him a "dirty stare down look." Defendant then started running towards Wilkins with his right hand in his waistband pocket area. When defendant was about fifty feet away from

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<sup>1</sup> Although in his statement of questions presented on appeal, defendant asserts that the evidence was insufficient to support all his convictions, his argument only addresses his CCW conviction. Therefore, our analysis is similarly limited.

Wilkins he *then* pulled out a gun and began shooting at Wilkins. The evidence does not specifically indicate that defendant was in the street and off of his property. However, construing the evidence in a light most favorable to the prosecution, *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), it was reasonable to infer that defendant was no longer on his property while his weapon was still concealed. Accordingly, sufficient evidence was presented to establish that the essential elements of CCW were proven beyond a reasonable doubt. See *People v Marrow*, 453 Mich 903; 554 NW2d 901 (1996) (defendant did not have a possessory interest in the area between the sidewalk and roadway sufficient to come within the exception stated in MCL 750.227(2)), overruled in part on other grounds *Pasha, supra*.

Next, defendant contends that the trial court abused its discretion in prohibiting cross-examination of the complainant about a prior conviction. A witness' credibility may be impeached with prior convictions, MCL 600.2159, but only if the convictions satisfy the criteria set forth in MRE 609. Although defense counsel raised the issue of a prior conviction, counsel failed to object to the court's sua sponte ruling and present an offer of proof regarding the nature of the prior conviction sufficient to create a record for appellate review. Even on appeal, defendant fails to identify the complainant's alleged prior conviction. In the absence of evidentiary support, including through an offer of proof, for a defendant's assertion that evidence was improperly excluded, any error in the exclusion of the evidence is harmless. MRE 103(a)(2); *People v Snyder*, 462 Mich 38, 42; 609 NW2d 831 (2000); *People v Witherspoon (After Remand)*, 257 Mich App 329, 331; \_\_\_ NW2d \_\_\_ (2003).

Defendant also contends that the trial court improperly scored twenty-five points for PRV 1. Defendant objected to this score and argued that it was unclear whether defendant's conviction in California for second-degree robbery constituted a high severity felony in Michigan. However, our review of the California and Michigan definitions of robbery suggest, without more facts, that defendant's California second-degree robbery conviction is akin to an unarmed robbery conviction in Michigan. Accordingly, in the absence of evidence to the contrary, it appears that the trial court correctly scored PRV 1.

Plaintiff concedes that, in sentencing defendant for the felonious assault convictions, the trial court departed from the guidelines as calculated or as urged by defendant and failed to articulate any reasons for the departure. Resentencing for these two counts is statutorily required. MCL 769.34(3); *People v Babcock (After Remand)*, \_\_\_ Mich \_\_\_; 666 NW2d 231, 238 (2003).

Defendant's convictions and sentences for CCW, felony-firearm, and discharge of a weapon are affirmed. Defendant's convictions for felonious assault are also affirmed, but the case is remanded for resentencing on the felonious assault convictions. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder